IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.33865 of 2007
PRAVEEN KUMAR, S/o Sri Babu Lal Rajak, R/o village Jai Nagar, Lal Pahari, P.S. Lakhisarai, District Lakhisarai ….. Petitioner
Versus
STATE OF BIHAR & ANR . … Opp. Parties

For the petitioner : M/s Girija Prasad &
Ram Swaroop Prasad, Advocates
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. 2 : none

This application is for the quashing of the order dated 7.5.2007 passed by the learned Sub Divisional Judicial Magistrate, Lakhisarai, in Lakhisarai P.S. case No. 152 of 2006, hereby the Court has taken cognizance under section 366 I.P.C.

One Naresh Prasad Razak filed a complaint petition bearing no. 422C of 2005 before the learned Addl. Chief Judicial Magistrate, Lakhisarai, which was transmitted to the concerned P.S. under section 156(3) Cr.P.C. on the basis whereof the aforesaid P.S. Case was registered under sections 363, 360 and 380 I.P.C. The prosecution case is that the complainant has one other brother and during life time of their parents there had been a partition whereunder his younger brother was living in the same house but in a different portion thereof. It was also stated that the complainant is employed in the Primary School, Bhadui under Chanan (Lakhisarai) where he resides and returns home only in the weekend and on holidays to meet his wife and three children. It is alleged that during his absence at about 7 in the morning of 4.12.2005 accused Babulal Razak and Prawin Kumar who earlier were tenants in his house

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seduced and enticed his wife and ran away with her and his children as the accused persons had developed illicit relationship with his wife Seema Devi. It is also alleged that apart from his wife and children the two accused had also taken away Rs. 50,000/- in cash and gold ornaments weighing 10 *bhars*.

It has been submitted by the learned counsel for the petitioners that he is innocent and has been falsely implicated in the instant case which would be apparent from the statement of the victim Seema Devi recorded under section 164 Cr.P.C. wherein she stated that her husband was a drunkard and when she protested against such bad habit for the safe guard of the children she would be assaulted therefor and fed up therewith she left the matrimonial home on 28.11.2005 with the children for Patna from where she took a train for Delhi and there a humanitarian lady provided her work in a factory so that he could learn her livelihood and provide for herself and her children. She had also stated that on 8.5.2006 the Lakhisarai police had visited her in her quarter at Delhi whom she told about her having left the matrimonial home annoyed by the behaviour and conduct of her husband.

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From perusal of the statement under section 164 Cr.P.C. of Seema Devi, it is clear that she had not been kidnapped and had left the matrimonial home with the children of her own accord and volition annoyed by the behaviour and conduct of his husband a habitual drunkard. Admittedly the statement under section 164 Cr.P.C. has more evidentiary and legal value than statement under

section 161 Cr.P.C.

In the circumstances it is difficult to understand how the learned Magistrate taking cognizance was remiss or on purpose failed to notice the statement under section 164 Cr.P.C. of the victim girl who was a major and the mother of three children and with the victim herself not supporting the prosecution case, the cognizance taken for offence under section 366 I.P.C. against the petitioner and another was unwarranted as the same would amount to not only abuse of the process of Court but harassment to the F.I.R. name accused.

In the facts and circumstances of the case I am inclined to allow the application.

In the result the application is allowed and the impugned order taking cognizance so far as the petitioner is concerned is hereby set aside.

(Abhijit Sinha, J.)

Patna High Court, Patna.
Dated : The 25th of November, 2008
Sanjay Pd./A.F.R.-

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